

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TOOLPLAS SYSTEMS, INC.,
Plaintiff,

Case No. 09-12003

v.

Honorable Patrick J. Duggan

CAMACO, LLC,
Defendant;

CAMACO, LLC,
Third-Party Plaintiff,

v.

TOOL-PLAS SYSTEMS, INC.,
Third-Party Defendant,

ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on April 9, 2010.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Presently pending before the Court are two motions for summary judgment: a motion for summary judgment filed by Tool-Plas Systems, Inc., and a motion for partial summary judgment filed by Camaco, LLC. Since the filing of these motions, the Court granted a separate motion for substitution allowing Toolplas Systems, Inc. (“NewCo”), to replace Tool-Plas Systems, Inc. (“OldCo”) as plaintiff. Given the change in plaintiff, the Court also re-opened discovery until May 31, 2010, and set a new dispositive motion

deadline for July 1, 2010. Nonetheless, the Court also indicated that it would construe the motion for summary judgment previously filed by OldCo as a motion by NewCo and resolve the pending motions while the parties completed discovery, unless the parties otherwise objected.¹

On April 6, 2010, Camaco filed a letter with the Court indicating its request that the Court hold the pending motions in abeyance until discovery regarding NewCo is completed. Camaco believes that information derived from the pending discovery will be relevant to the proper resolution of the pending motions. On April 7, 2010, NewCo filed a letter expressing its disagreement with Camaco's position. NewCo believes that the issues raised in its motion can be decided without further discovery.

To avoid any possibility of prejudice to Camaco as a result of the substitution and to avoid duplicative efforts by the Court in deciding dispositive motions in this case, the Court will refrain from deciding the pending motions at this time. Rather than hold the pending motions in abeyance, however, the Court will dismiss both motions without prejudice. If a party believes that the pending discovery requires no changes to its motion, such party is free to re-file the same motion at that time. If the pending discovery reveals information relevant to a decision on the pending motions, however, this procedure will allow the parties to freely amend their filings and re-set the time for

¹In the prior opinion and order, the Court inadvertently indicated that there was only a single motion for partial summary judgment pending. For clarification, the Court intends to deal with both pending motions in the same manner.

responses thereto. To this end, the parties are again reminded of the new July 1, 2010, deadline by which they may file (or re-file) their dispositive motions.

Accordingly,

IT IS ORDERED that the pending motions for summary judgment and partial summary judgment are **DISMISSED WITHOUT PREJUDICE**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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